

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.562 OF 2005

Anantrai Shantilal Shah ... Petitioner

Vs.

Keshawa Housing Pvt. Ltd. & Ors. ... Respondents

Mr. B.B. Parekh i/b Mr. B. D'Souza for the petitioner.

Mr. J.P. Sen i/b Ms. A. R. Shinde for respondent 1.

CORAM: SMT. RANJANA DESAI, J.

DATED: 22ND FEBRUARY, 2005.

P.C.:-

1. The petitioner is original respondent 1 - licensee. Respondent 1 is the original applicant - licensor. Respondents 2 to 6 are the confirming parties to the leave and licence agreement dated 31/8/2002. Respondent 7 is the Competent Authority. For the sake of convenience, the parties are referred to in this order as per their status in the original application.

2. Admittedly, the leave and licence agreement dated 31/8/2002 was entered into by the applicant with respondent 1. To this agreement, respondents 2 to 6 are the confirming parties. This agreement was for a period of 22 months. There is yet one more agreement between applicant and respondents 2 to 6, under which the

applicant was to provide furnitures and fixtures to respondent 1. The clauses of the leave and licence agreement are of some importance. It appears from the leave and licence agreement that respondent 1 was in possession of a bungalow by name DHWANI, situate at Plot No.67, Village Vile Parle. Respondents 2 to 6 agreed to develop the said leasehold property of respondent 1 after demolishing the said bungalow. The applicant agreed to provide respondent 1 with temporary accommodation. As per the said agreement, it is at the request of the confirming parties that the applicant permitted respondent 1 to occupy Flat No.401 in Dev Krupa building situate at J.V.P.D. Scheme, Vile Parle (West), Mumbai - 400 086 (for convenience, "the suit premises") on leave and licence basis for 22 months commencing from 1/9/2002. It is also an admitted position that in the said agreement, there is a clause which states that the confirming parties shall pay monthly compensation to the licensor. The said agreement was to expire on 30/6/2004. It appears that there were certain disputes between respondent 1 and respondents 2 to 6 and respondents 2 to 6 disowned their responsibility of paying the compensation in respect of the suit premises and also providing accommodation to respondent 1. Having got to know about this, it appears that, the applicant sent a notice dated 26/6/2004 calling upon respondent 1 to vacate the suit premises. Respondent 1 did not vacate the suit premises and, hence, an application was preferred by the applicant before the Competent Authority

appointed under the Maharashtra Rent Control Act, 1999

(for short, "the Rent Act").

3. By its order dated 26/10/2004, the Competent Authority rejected the application of respondent 1 and respondents 2 to 6, for leave to defend and, on the same day, by a separate order it allowed the application of the applicant and directed respondent 1 to hand over possession of the suit premises to the applicant. Being aggrieved by this order, respondent 1 preferred a revision application before the Additional Commissioner, Konkan Division, Mumbai. By its order dated 18/1/2005, the Additional Commissioner, Konkan Division rejected the Revision Application and, hence, this writ petition.

4. I have heard, at considerable length, the learned counsel appearing for the petitioner. The learned counsel contended that the impugned orders suffer from patent illegalities and deserve to be set aside. He contended that the trial court having rejected the application of respondent 1 for leave to defend could not have answered Issue No.4 i.e. whether respondent 1 proves that the memorandum of understanding dated 24/11/2001 and the agreement for development dated 31/8/2002 are binding on the applicant, in the negative. He submitted that in fact, by rejecting leave to defend, the Competent Authority, in effect, did not give an opportunity to respondent 1 to plead its case. The learned counsel further submitted that the leave and licence agreement in

this case is not a typical leave and licence agreement as contemplated under section 43 of the Rent Act. He submitted that the whole transaction was entered into at the instance of the confirming parties and, therefore, if the confirming parties had decided not to abide by the terms agreed upon by them, respondent 1 cannot be asked to vacate the suit premises by adopting the remedy under section 43 of the Rent Act. The learned counsel contended that perhaps some other remedy might be available to the applicant, but certainly not the one which he has adopted. The learned counsel further submitted that there is nothing to indicate that the director of the applicant was authorised by the applicant to file the application. He submitted that this vital aspect was not considered by the authorities and, therefore, on all these counts, the impugned orders must be set aside.

5. I am unable to agree with the learned counsel appearing for the petitioner. It is true that in the leave and licence agreement, there is a reference to some memorandum of understanding and development agreement, which were entered into by respondent 1 with respondents 2 to 6. But, in my opinion, on a proper reading of the leave and licence agreement, it is very clear that the leave and licence transaction is an independent transaction and, there is no clause in the leave and licence agreement to the effect that in case, the memorandum of understanding or the development agreement

fail, the leave and licence agreement would also fail or that its terms and conditions need not be carried out. In fact, clause 14 of the leave and licence agreement provides that on the validity of the leave and licence agreement coming to an end, the licensee agrees and undertakes to restore the possession of the licensor and the licensee shall remove himself from the suit premises. This is an independent clause which has got nothing to do with the memorandum of understanding or the development agreement. Therefore, because on account of some disputes between respondent 1 and respondents 2 to 6, respondents 2 to 6 had made their intention of not giving the compensation to the applicant clear, it was within the competence of the applicant to send notice and ask respondent 1 to vacate the suit premises on expiry of the period contemplated in the leave and licence agreement. There are no fetters on the applicants' right of terminating the leave and licence agreement merely because the memorandum of understanding and the development agreement entered into by respondent 1 with respondents 2 to 6 are referred to in the leave and licence agreement.

6. There is also no substance in the contention that because leave to defend was rejected, the Competent Authority could not have decided the issues against respondent 1 as he had no chance to defend the case. Under section 43(b) of the Rent Act, the Competent Authority shall give to the tenant or licensee leave to

contest the application if the affidavit filed by the tenant or licensee discloses such facts as would disentitle the landlord from obtaining an order for recovery of possession. Obviously, therefore, if facts which would disentitle the landlord from obtaining an order for recovery of possession are not disclosed in the affidavit, the Competent Authority can refuse to grant leave to defend and proceed with the application and dismiss it. There is nothing in the Rent Act which indicates to the contrary.

7. So far as the argument that the applicant had not authorised the director to file the instant application is concerned, this point does not seem to have been raised either before the Competent Authority or before the Revisional Authority and, hence, in my opinion, respondent 1 cannot be allowed to now agitate this point.

In view of this, the petition is rejected.

8. At this stage, the learned counsel for the petitioner requests that the operation of this order be stayed as the petitioner is considering challenging this order in the Supreme Court. The learned counsel for respondent 1 opposes the said request. In the circumstances of the case, operation of the present order is stayed for a period of four weeks from today on the petitioner and all adult members of his family filing the usual undertakings in this court that for a period of four weeks they shall not alienate, encumber or create any third party rights

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in any manner or induct any third person in the suit premises and, on expiry of four weeks in case the petitioner does not get any favourable order from the Supreme Court, he shall hand over vacant and peaceful possession of the suit premises to respondent 1 in this petition - Keshawa Housing Private Limited. Undertaking to be filed within a period of two weeks from today. Needless to say that in case, the petitioner does not get any favourable orders from the Supreme Court, he will have to pay all arrears of compensation to respondent 1.

(SMT. RANJANA DESAI, J.)